Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of AT&T Services, Inc. for Forbearance	)	WC Docket No. 16-363
Under 47 U.S.C. § 160(c) from Enforcement of	)	
Certain Rules for Switched Access Services and Toll	)	
Free Database Dip Charges	)	

**CENTURYLINK OPPOSITION/COMMENTS
TO AT&T FORBEARANCE PETITION**

Timothy M. Boucher
1099 New York Avenue, N.W.
Suite 250
Washington, D.C. 20001
(303) 992-5751
Timothy.boucher@centurylink.com

Attorney for

CENTURYLINK, INC.

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TABLE OF CONTENTS

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**CENTURYLINK OPPOSITION/COMMENTS
TO AT&T FORBEARANCE PETITION**

CenturyLink[1] hereby opposes and comments regarding AT&T's September 30, 2016 Petition for Forbearance (AT&T Petition)[2] as follows:

I. INTRODUCTION AND SUMMARY

The AT&T Petition asks that the Commission forbear from: (1) "the tariffing requirements of the Act and its rules as to all tandem switching and tandem-switched transport charges on all traffic to or from LECs engaged in access stimulation";[3] and (2) "all of its rules that allow LECs to tariff a charge billed to [interexchange carriers (IXCs)] for toll-free database queries."[4]

[1] This submission is made by and on behalf of CenturyLink, Inc. and its subsidiaries.

[2] Public Notice, WC Docket No. 16-363, Pleading Cycle Established for Comments on AT&T's Petition for Forbearance from Certain Tariffing Rules, DA 16-1239 (rel. Nov. 2, 2016); Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges, WC Docket No. 16-363, Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c) (filed Sep. 30, 2016) (AT&T Petition).

[3] AT&T Petition, at 13.

[4] *Id.*, at 20 (citation omitted).

While not part of its forbearance requests, AT&T, in its petition, also urges the Commission to "promptly issue new rules to address the remaining inefficiencies and arbitrage activities" that remain as a result of the "hybrid intercarrier compensation system[]" left in place following the reforms accomplished in the 2011 *Transformation Order*.[5]

The Commission should deny the forbearance relief sought in the AT&T Petition regarding tandem charges and instead, take a more targeted approach that will address a broader range of ongoing arbitrage problems relating to tandem charges. While LEC tandem and mileage transport charges related to access stimulation continues to be a problem, the Commission should simply clarify that all tandem provider rates are subject to the CLEC benchmark rule and that it is unlawful for terminating carriers to refuse direct interconnection to IXCs. This will largely if not completely eliminate the more narrow concern that AT&T seeks to address while also addressing some of the broader tandem-related issues within the industry. It will also avoid requiring all tandem providers to create new systems and processes to identify traffic that is bound for a LEC engaged in access stimulation – something that cannot now be done.

Similarly, the Commission could better address the underlying problem giving rise to AT&T's forbearance request regarding database query charges by clarifying that those charges

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[5] *Id.*, at 3; *see also In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (*Transformation Order*) (subsequent regulatory history omitted), *aff'd sub nom., In re: FCC 11-161*, Nos. 11-9900, *et al*., 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Orders, Aug. 27, 2014, *cert. denied*, 135 S. Ct. 2072, May 4, 2015 (Nos. 14-610, *et al*.).

are subject to the CLEC benchmark rule. The Commission could also go further and establish a defined historical average cap rate to be charged by all LECs providing the 8YY database query service. Database query charges entail real costs and LECs must be assured of the ability to recover those costs. But, the relief requested in the AT&T Petition in the forbearance context would prohibit LECs from recovering the costs of those services from IXCs without creating an alternative cost-recovery mechanism. In contrast, CenturyLink's proposed solution will assure that LECs can continue to recover their costs while also addressing the underlying problem. It will also allow the Commission to be more deliberate in addressing the proper treatment of such charges for the long term – given that it is not yet clear what solution will make the most sense in the all-IP world for these types of charges.

With respect to AT&T's call for Commission action to conduct ICC reform more broadly, that request implicates the various broader ICC issues that remain pending in the Commission's ICC FNPRM docket.[6] A more balanced approach will be needed to address these open issues as well.

II. DISCUSSION

A. THE COMMISSION SHOULD DENY THE REQUESTED FORBEARANCE RELIEF REGARDING TANDEM CHARGES AND, INSTEAD, ADOPT A MORE TARGETED APPROACH.

The Commission should deny the relief sought in the AT&T Petition regarding tandem charges and, instead, take a more targeted approach to addressing the underlying arbitrage problems that AT&T identifies. A better approach would be for the Commission to simply clarify that tandem provider rates are subject to the CLEC benchmark rule[7] and that it is unlawful

[6] *Transformation Order*, 26 FCC Rcd at 18045-149 (2011 ICC FNPRM).

[7] *See* 47 C.F.R. § 61.26.

for terminating carriers to refuse direct interconnection with IXCs for the exchange of traffic. This will largely if not completely eliminate the concern that AT&T seeks to address. And, it will address broader arbitrage problems that currently arise with tandem charges.

CenturyLink agrees with AT&T that tandem and transport charges imposed on traffic bound for LECs involved in access stimulation is one of the arbitrage problems currently plaguing the industry. This problem arises because: (1) some tandem providers impose excessively high rates and take the position that their services are not subject to the CLEC benchmark;[8] and (2) some terminating carriers refuse to offer IXCs direct interconnection for traffic exchange and instead demand that IXC traffic terminating to their network be routed via an intermediate tandem provider.[9]

As AT&T acknowledges in its petition, these practices are already lawful.[10]

Given this, CenturyLink's proposed approach would be an effective solution. The core scenario at issue in the AT&T Petition is that some LECs assess high per-minute, per-mile transport charges while also refusing to offer direct trunking to their end offices.[11] Subjecting access tandem services to the CLEC benchmark rule will eliminate the excessive tandem and transport rates currently plaguing the industry. And, if terminating carriers are required to offer direct connection, IXCs will have the ability to avoid metered tandem charges and place competitive pressure on tandem rates. At the same time, providers will still have some ability to recover their cost. As AT&T acknowledges, eliminating this direct interconnection problem,

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[8] AT&T Petition, at 9-11.

[9] *Id.*, at 15.

[10] *Id.*, n. 18 and n. 20.

[11] *Id.*, at 15.

which is already unlawful, "would have allowed IXCs to avoid most or all of the transport charges" at issue in its Petition.[12]

The AT&T Petition's requested relief will also impose significant new costs on tandem providers – many of whom, as AT&T also acknowledges, have no relationship with access stimulators.[13] Current industry standard systems and processes for tandem switching and transport facilities do not have the capability of identifying and carving out for special treatment traffic that is bound for CLECs engaged in access stimulation. Thus, this capability would now have to be created – something that would impose significant costs on tandem providers.

For all of these reasons, the Commission should deny the forbearance requested in the AT&T Petition regarding tandem and transport charges and, instead, adopt the targeted relief described above.

B. THE COMMISSION SHOULD ALSO ADOPT A MORE TARGETED SOLUTION AS TO DATABASE QUERY CHARGES.

The Commission could also better address the underlying problem giving rise to AT&T's forbearance relief regarding database query charges by adopting a more targeted solution there. Specifically, it should clarify that those charges are subject to the CLEC benchmark rule. This is the better reading of the Commission's *Seventh Report & Order* on CLEC access charge reform.[14] To the extent there is any question about that conclusion, the Commission can now eliminate any question by issuing a clarification to this effect. The Commission could also go further and establish a defined historical average cap rate for all LECs providing this service.

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[12] *Id*.

[13] *Id.*, *e.g.*, at 15.

[14] *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (Apr. 27, 2001) (*Seventh Report & Order*).

AT&T has a valid point that database query charges vary considerably within the industry. This fact, coupled with the fact that the carriers who pay these charges (IXCs) do not make the decision regarding which provider performs the database query, has created arbitrage issues within the industry. In other words, given that the originating carrier who hires the 8YY database query service provider does not pay for the query charges, uneconomic hiring decisions and relationships have been established. CenturyLink agrees that this issue should be addressed. However, database query services entail real costs and LECs providing those services must be assured of the ability to recover those costs. And, the relief requested in the AT&T Petition would simply prohibit LECs from recovering the costs of those services from IXCs without creating an alternative mechanism for LECs to be able to recover those costs.

In contrast, CenturyLink's alternative solution will assure that LECs have the opportunity to recover their costs while also addressing the underlying problem – the excessively high and highly variable rates imposed by some LECs.

The Commission's orders make clear that LEC database query charges are subject to the CLEC benchmark. In the *Seventh Report & Order*, the Commission emphasized that it did not intend to "restrict CLECs to tariffing solely the per-minute rate that a particular ILEC charges for its switched, interstate access service."[15] Instead, the Commission intended to prevent CLECs from receiving revenues exceeding, "those the ILECs receive *from IXCs*, whether they are expressed as per minute or flat-rate charges."[16] And, it made clear that the "benchmark rate for CLEC switched access does not require any particular rate elements or rate structure; for example, it does not dictate whether a CLEC must use flat-rate charges or per-minute charges, so

[15] *Seventh Report & Order*, 16 FCC Rcd at 9945 ¶ 54.

[16] *Id.* (emphasis in original).

long as the composite rate does not exceed the benchmark."[17] Accordingly, the CLEC benchmark applies to *all* services that comprise the CLEC's interstate switched access service, and "applies, but is not necessarily limited, to" any specific rate elements.[18]

Certain CLECs have taken the position that the Commission has effectively allowed them to impose whatever charges they wish for database query charges through their switched access tariffs because the Commission, in the *Seventh Report & Order,* chose to not place a separate specific cap on the toll free database query rate element of access charges. But, this position cannot be squared with the Commission's prior holdings. The *Seventh Report & Order* otherwise makes clear that it was specifically addressing access charges for toll-free traffic in its new framework – i.e. it was applying the ILEC benchmark limitation to tariffs for both originating and terminating access charges for toll-free.[19] It did decline a request by certain carriers to require CLEC toll-free database query charges, which are an individual rate element of toll free access charges, to match the rate of the competing ILECs based on a lack of evidence in the record at the time. However, in doing so, it made clear that it expected "that CLECs will not look to this category of tariffed charges to make up for access revenues that the benchmark system denies them."[20] Moreover, the Commission did not exclude toll-free database query charges from the mix of rate elements comprising the aggregate charge for switched access services subject to the benchmark.[21]

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[17] *Id.*, 16 FCC Rcd at 9946 ¶ 55.

[18] *Id.*, at ¶ 55 and n.126.

[19] *Id.*, at ¶ 56.

[20] *Id.*, at ¶ 56 and n.128. Sprint first raised the issue late in the proceeding and the Commission declined to address it further "[g]iven the dearth of record evidence" on it at the time. *Id.*

[21] When, thereafter, the Commission further refined its benchmark rules in a subsequent *Eighth Report & Order* on access charge reform, *Access Charge Reform; Reform of Access Charges*

To the extent there can be any dispute about whether CLEC database query charges are subject to the CLEC benchmark rule, the Commission can and should now eliminate any question by issuing a clarification to this effect. In the alternative, since there is clearly no economic justification for CLECs imposing toll free database query charges that exceed the ILEC rate for the same service, the Commission could now find that it is an unreasonable practice under the Act for CLECs to impose charges for toll free database queries that exceed the ILEC rate for the same service.

This solution will also allow the Commission to be more deliberate in addressing the proper treatment of such charges for the long term – given that it is not yet clear what solution will make the most sense in the all-IP world for these types of charges.

For all these reasons, the Commission should deny the forbearance request in the AT&T Petition relating to database query charges and, instead, adopt a more targeted solution consistent with the above discussion. The Commission could also go further and establish a defined historical average cap rate for all LECs for these charges.

C. THE COMMISSION SHOULD TAKE A BALANCED APPROACH TO THE BROADER ICC FNPRM ISSUES.

The Commission should also proceed with caution when it comes to addressing the broader ICC reform issues that remain pending in the Commission's ICC FNPRM docket. As

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Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108 (2004) ("*Eighth Report & Order*"), the Commission again made clear that CLEC "access rates for 8YY traffic must be at or below the benchmark," *Eighth Report & Order*, 19 FCC Rcd at 9143 ¶ 71. The Commission declined, however, to require that access rates for 8YY traffic in general, or 8YY database query charges specifically, to be immediately capped at the ILEC rates, allowing them to be subject to the same declining benchmark during the three year adjustment period applicable to other access services. *Id.* at 9142 ¶ 69 n.251.

with the forbearance issues discussed above, a more balanced approach will be needed to address these issues as well.

As CenturyLink and other parties have previously documented, a variety of important concerns need to be attended-to when looking for solutions to the ICC FNPRM issues. To begin with, any reform of originating access charges must account for the reality that originating access functionality, particularly that relating to 8XX service, is distinct from terminating access functionality because of the retail customer relationship between the IXC and the calling party (or, for toll-free services, the called party).[22] Even if originating access charges, or some of them, are to be reduced or eliminated eventually, the Commission should, and legally must, ensure that a mechanism exists for LECs to recover the costs of those services.[23] There are also important concerns to be attended-to when addressing open issues regarding the future treatment of common and dedicated transport access elements and other access service elements not included in the *Transformation Order* transition.[24] And, there are important issues that need to be addressed regarding the network edge and POIs, the role of agreements and tariffs in the post-*Transformation Order* world, and ensuring that LECs have adequate flexibility when it comes to end user charges.[25]

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[22] 2011 ICC FNPRM, 26 FCC Rcd at 18109 ¶ 1297, 18111 ¶ 1303.

[23] *See, e.g.*, 2011 ICC FNPRM, 26 FCC Rcd at 18116 ¶ 1316 & n.2380.

[24] *See, e.g.*, 2011 ICC FNPRM, 26 FCC Rcd at 18109 ¶ 1296, 18115 ¶ 1314; *and see also*, *Transformation Order*, 26 FCC Rcd at 17905 ¶ 739.

[25] 2011 ICC FNPRM, 26 FCC Rcd at 18116-19 ¶¶ 1316-24.

III. CONCLUSION

For the reasons stated above, CenturyLink respectfully requests that the Commission take the action described herein.

Respectfully submitted,

CENTURYLINK, INC.

By: /s/ Timothy M. Boucher
Suite 250
1099 New York Avenue, N.W.
Washington, D.C. 20001
(303) 992-5751
Timothy.boucher@centurylink.com

Its Attorney

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